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1	BEFORE THE FE	EDERAL ELECTION COMMISSION	C SISSION SECRETARIAT	
2	In the Matter of)	006 JUL 12 A 9:23	
4 5 6	MUR 5748 CURT HOHN) CASE CLOSURE UNDI) ENFORCEMENT PRIO	ER THE	
7 8 9			SENSITIVE :	
10 11	GENER	RAL COUNSEL'S REPORT		
12	The Office of General Couns	sel has scored MUR 5748 as a low-rated r	matter. Under	
13	the Enforcement Priority System, m	natters that are low-rated	and are	
14	deemed inappropriate for review by the Alternative Dispute Resolution Office are forwarded			
15	to the Commission with a recommendation for dismissal. The Commission has determined			
16	that pursuing low-rated matters compared to other higher rated matters on the Enforcement			
17	docket warrants the exercise of its prosecutorial discretion to dismiss these cases.			
18	The facts giving rise to this complaint, which were circulated informationally to the			
19	Commission on May 16, 2006, involve the alleged underreporting of expenditures by the			
20	respondent's, Curt Hohn's, Congressional campaign committee during the 2000 election.			
21	Additionally, as the General Manager for respondent, WEB Water ("WEB"), Mr. Hohn			
22	allegedly continued to receive annual salary payments (totaling between			
23	and retirement benefits, although he was campaigning for public office for up to 10			
24	months immediately prior to the election. The respondents denied the allegations. They			
25	noted that the basis for the complain	noted that the basis for the complainant's reporting allegation stems from the deposition of		
26	Paul Fischbach, Mr. Hohn's former Committee treasurer, concerning an access to records			
27	lawsuit filed by the complainant. Mr. Fischbach testified as to his recollection of Committee			
28	expenditures, but he did not have the Committee's financial records to refer to at the			
29	deposition in order to confirm the amount of expenditures. Mr. Hohn refuted the allegation			

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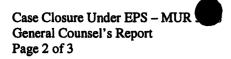
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- 1 concerning his salary from WEB by claiming that he was able to devote the necessary time
- 2 . needed to satisfy both his managerial duties and campaign for Congress. Specifically,
- 3 Mr. Hohn stated by affidavit that during the campaign he worked on WEB business for an
- 4 average of 40 hours per week. Thus, Mr. Hohn argues that his salary did not amount to an
- in-kind contribution from WEB to his campaign committee.¹ 5

6 The alleged activity in this case took place over five years ago and, therefore, is

beyond the statute of limitations. Federal Election Commission v. Williams, 104 F.3d 237 7

(9th Cir. 1996), cert. denied, 522 U.S. 1015 (1997). Accordingly, in reviewing the

speculative nature of the complaint, as well as the procedural posture of MUR 5748, and in

furtherance of the Commission's priorities and resources relative to other pending matters on

the Enforcement docket, the Office of General Counsel believes that the Commission should

exercise its prosecutorial discretion and dismiss the matter.² See Heckler v. Chaney, 470

U.S. 821 (1985).

RECOMMENDATION

15 The Office of General Counsel recommends that the Commission dismiss

MUR 5748, close the file effective two weeks from the date of the Commission vote, and

approve the appropriate letters. Closing the case as of this date will allow CELA and

18 General Law and Advice the necessary time to prepare the closing letters and the case file for

19 the public record.

> It should be noted that prior to the complaint being filed in this matter, Curt Hohn for Congress was permitted to terminate on March 22, 2002.

James A. Kahl Deputy General Counsel

BY:

Gregory R. Baker Special Counsel

Complaints Examination & Legal Administration

Supervisory Attorney **Complaints Examination**

& Legal Administration

MUR 5748

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Complainant:

Bill Johnson

8 Respondents:

Curt Hohn

WEB Water Development Association, Inc.

 Allegations: The complaint alleges that respondent, Curt Hohn, who ran for a seat in Congress in 2000, failed to disclose certain receipts and expenditures for his campaign committee in violation of 2 U.S.C. § 434. Additionally, as the General Manager for WEB Water ("WEB"), a non-profit water utility in northeastern South Dakota, respondent continued to receive his salary, which was estimated between

annually, notwithstanding the fact that he was campaigning full time. Moreover, complainant noted that the respondent continued to receive retirement benefits from WEB and possibly used WEB's facilities in 2000 while campaigning full time for Congress.

Response: In a joint response submitted from the respondents they noted that Mr. Hohn was asked by WEB to stay on the job while he was campaigning for office as long as he could manage his official duties. Mr. Hohn noted they he was not engaged in campaigning for Congress full time and was able to manage both his job and the campaign. Additionally, Mr. Hohn claims that he did not use of WEB's funds or facilities for campaign purposes. Furthermore, Mr. Hohn explained that discrepancies that appeared between a deposition transcript taken from his treasurer and figures found on his committee's FEC reports were the result of his treasurer's inability to precisely recall the exact expenditures of the committee off the top of his head, which related to campaign activities from six years earlier.

General Counsel Note: The facts giving rise to this complaint took place in 2000 and, therefore, appear to be beyond the applicable statute of limitations for an FEC Enforcement action. It should be noted that the complainant is currently engaged in litigation with Mr. Hohn in an unrelated matter and alleges that the deposition of the campaign committee's treasurer, Paul Fischbach, revealed that the committee failed to report the full amount of its receipts and expenditures during the 1999-2000 election cycle. Finally, the respondent's committee, Curt Hohn for Congress, terminated its reporting responsibilities with the Commission on March 22, 2002.

Date complaint filed: May 15, 2006

Response filed: June 8, 2006